

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on March 19, 2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Roy Brown, Vice Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 321, SB 477, SB 311, SB
310, SB 207, SB 181, 3/16/2001
Executive Action: SB 311, SB 321, SB 310, SB
207, SB 181

HEARING ON SB 321

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Gary Lusin, Bozeman, Mt. Chapter of the American
Physical Therapy Assn.
Gail Wheatley, Great Falls
Kirk Hanson, Helena
Jim McLean, Frenchtown
Sami Butler, Mt. Nurses' Assn.
Mona Jamison, lobbyist, Mt. Chapter of the American
Physical Therapy Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, said this bill does something that should have happened some time ago but it just didn't get done. It's the freedom to choose for licensed physical therapy and it's really good for the people of our state because they don't have to find a doctor first to give them a prescription to go to a physical therapist. {Tape : 1; Side : A; Approx. Time Counter : 0 - 2.7}

Proponents' Testimony:

Gary Lusin, Bozeman, Mt. Chapter of the American Physical Therapy Assn., said his chapter has over 400 members across the state. In 1987 they pursued direct access, which the legislature passed, and they've been operating well since then from a clinical standpoint. Soon after that, Blue Cross/Blue Shield changed their policy to allow their insured to receive services from physical therapists without physician referral, and they paid for that accordingly. Since then, a few other insurances have followed suit, but there are many insurers at this point that do not honor the statute. This creates hassles for therapists and patients as well as the physicians or anyone involved in the patients' care. This bill would clarify that and amend the insurance statutes to make it clear that when policies cover physical therapy services, the individual has the freedom of choice to select a therapist, go to that therapist without physician referral and have those services covered according to their policy. They encourage support of the bill. **EXHIBIT** (huh62a02) {Tape : 1; Side : A; Approx. Time Counter : 2.7 - 4.4}

Gail Wheatley, Great Falls, physical therapist, said she had worked in Fort Benton for over seven years and most of the time a primary care physician was not in Fort Benton but in Great Falls. All the speciality care was in Great Falls. This bill would be an enormous bonus to the people in a rural community who don't have easy access to their physicians and would have some difficulty going into Great Falls and making appointments for services that are not always necessary and not required by state law. She thinks this would be very helpful for some of those small communities. There is already a law on the books that allows anyone to go to a physical therapist without physician referral, so that does not change. This does not require an insurance company to pay one dime more than they already are. These are for covered services. It doesn't change or enlarge her scope of practice in any way. It only says if you cover physical therapy services, you will pay for them, and it gives patients an assurance of reimbursement, just like when they choose their chiropractor, their psychologist or their acupuncturist now, they can choose their physical therapist and know that they will be reimbursed for that. **{Tape : 1; Side : A; Approx. Time Counter : 4.4 - 6.2}**

Kirk Hanson, Helena, physical therapist, requested support for the bill. He thinks it would be helpful to people seeking physical therapy because they could get it sooner, without having to wait for approval from an insurance company or to wait to see another practitioner such as a physician for a referral. **{Tape : 1; Side : A; Approx. Time Counter : 6.2 - 7}**

Jim McLean, Frenchtown, physical therapist, encouraged the committee to support the bill because it will save consumers money. Often they go to a doctor simply to get a prescription when they know they need physical therapy, so they have an extra doctor's visit that may not be necessary. Secondly, a number of studies have shown that the earlier you go to physical therapy, the shorter the course of treatment and the cheaper it is. **{Tape : 1; Side : A; Approx. Time Counter : 7 - 7.4}**

Sami Butler, Mt. Nurses' Assn., said that nurses are advocates for access to health care and also freedom of choice of providers. They believe that this bill supports this concept, and it looks like it is going to decrease costs and they're all for that.

Mona Jamison, lobbyist for the Mt. Chapter of the American Physical Therapy Assn., said that in 1987 when they drafted their bill for direct access, they didn't get the job totally done. They amended section 37-11-104 in the Mt. Physical Therapy Practice Act, where it made it quite clear in (3) that evaluation and treatment provided by physical therapists could be done without a referral from a physician. Blue Cross/Blue Shield honored that provision, as

did other insurers. It saved money and provided quicker physical therapy services to those in need. Unfortunately, not all of the insurers complied, and the physical therapists think it is because they didn't go into the insurance code and make it clear in that code also that you did not need a prescription before you went to see a physical therapist. In Section 1 of this bill, 33-22-111 is being amended where physical therapists are being added to a list that's already provided which allows consumers/patients to choose a physical therapist without a referral. That's direct access. That's the insurance code direct access provision. Section 2 applies to health service corporations, and although the Blues have complied with that, and it's important that that be recognized, the physical therapists felt that in terms of equal drafting, they should make sure this time they get the job totally done. That's what this bill is about. If a person needs physical therapy services, they can choose their physical therapist and they can save the whole health care system dollars. The scope of practice is not changed in this bill and no benefit is created that may not already be provided. If there is a provision in someone's health insurance policy that physical therapy services are provided, the patient/consumer may choose a physical therapist and not wait for a referral from their physicians. **EXHIBIT (huh62a01) {Tape : 1; Side : A; Approx. Time Counter : 7.4 - 12.1}**

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Noennig asked **Mona Jamison** to explain what section 2 of the bill does. **Ms. Jamison** said in working with the Legislative Council, they said the comparable section for health service corporations is the section that is drafted here. If you go into Title 33, chapter 30, part 10, you will see that other health care providers that are listed in section 1, which is what applies to the regular health insurance companies, have exact comparable sections as section 2 in the health service corporation law, but they were not consolidated into one section, they were all set out separately. The physical therapists were advised to do the same, rather than start amending many sections. **{Tape : 1; Side : A; Approx. Time Counter : 12.1 - 14.1}**

Closing by Sponsor:

Sen. Mahlum said that this bill, although it's small in stature and doesn't say much, means a lot to the working people of Montana, because of the fact that if they do have a problem, they don't have to go to a regular physician and they can go to a physical

therapist without a prescription and can get the work done quicker, go back to their family in better shape and go back to work. It makes it a lot better for the people of Montana. This is what we call direct access and it is cost effective. {Tape : 1; Side : A; Approx. Time Counter : 14.1 - 18.1}

HEARING ON SB 477

Sponsor: SEN. GREG JERGESON, SD 46, Chinook

Proponents: Rose Hughes, Ex. Dir., Mt. Health Care Assn.
Sen. Linda Nelson, SD 49, Medicine Lake
Lori Henderson, Havre
Evelyn Havskjold, Director, Area 10 Agency on Aging
Denzel Davis, Admin., Quality Assurance Div., DPHHS
Janet Thomas, Hobson
Jim Ahrens, Mt. Hospital Assn.
Phyllis Taylor, Lewistown
Bill McLean, nursing home owner

Opponents: Betty Beverly, Ex. Dir., Mt. Sr. Citizens' Assn.
John Kershaw, East Helena
Chuck Notbohm, Clancy, AARP
Anita Rossmann, Mt. Advocacy Program

Opening Statement by Sponsor:

SEN. GREG JERGESON, SD 46, Chinook, presented amendments to the bill. He said that the primary purpose of this bill was a subject that came from a number of discussions that legislators have had with providers of long-term nursing home care to families around the state. It came to have personal meaning to him. Over five and a half years ago, his dad had a severe stroke and on several different occasions, he had him cared for in a nursing home. One of the questions the family asked was about his safety in his bed and whether or not they would have things like side rails. They wanted to be assured that he would not roll from or fall from the bed and be injured. In dealing with the staff at three different nursing homes, he got three different reactions about whether or not they could permit the use of side rails or other safety devices as part of his care. This bill deals with a matter that most families would consider to be common sense. We want some assurance that reasonable means are maintained for the safety and health of our loved ones who reside in nursing homes. This bill is fairly self-explanatory. It lets the patient, the resident or his family or other responsible person in consultation with the physician and the professionals in the facility, determine whether or not

circumstances warrant that a bed rail be used as a safety device, or a seat belt would be used as a safety device on a wheelchair. It does not permit the use of restraints for the purposes of this bill for tying a person down by all four limbs or other such kinds of restraint usage. It is limited on the kinds of things that would be considered. It would have to be reviewed at least quarterly, and families would have to be brought in to pay attention to the issues that may surround the use of these devices. The amendments grant rulemaking authority to DPHHS so that the bill would be properly implemented. The bill is offered as a good common-sense solution to the concerns of a lot of families out there about how we care for and protect our loved ones. **EXHIBIT(huh62a03) {Tape : 1; Side : A; Approx. Time Counter : 18.1 - 21.9}**

Proponents' Testimony:

Rose Hughes, Ex. Dir., Mt. Health Care Assn., representing nursing homes and personal care facilities, said they are in strong support of the bill, largely in behalf of the residents and their families. The federal government has been very actively involved in nursing homes, which are very highly regulated from the federal level. There has been a lot of concern about restraints in nursing homes. In 1987 there was an effort to lessen the use of restraints. Later the federal government turned its sights to safety devices that used to be considered alternatives to restraints, and now they are considering them to be restraints. Through various interpretations, there is often a question about whether a bed rail or seat belt is a restraint. It has become complicated, and the end result is that facilities are very cautious when a family requests bed rails or seat belts. As often as not, the answer is that the facility can't use them because of federal interpretations. Nursing homes fear survey deficiencies and citations for the use of restraints, and that is how such a simple thing has become so complicated. Her association is trying to simplify it again by carving out a very small area. This area is when the patients themselves ask for it, or when someone who is legally authorized to make decisions on their behalf asks for it, it's easier for it to happen. There are a number of safeguards in the legislation, including informed consent. The facility will have to explain the risks associated with bed rail use, and alternatives that might be used instead of the safety devices. Once informed consent has been obtained and a physician has agreed that it is appropriate, then they want that patient's wishes to be met. That's what this legislation is about. It doesn't circumvent any federal legislation or regulations. It simply fills in a small blank about what you do in a case where a person asks for it. They're trying to figure out how facilities can do that without being in the middle of the tug-of-war game that goes on between the federal government and the state surveyors and

the facility. **EXHIBIT** (huh62a04) {Tape : 1; Side : A; Approx. Time Counter : 21.9 - 30}

Sen. Linda Nelson, SD 49, Medicine Lake, said in Sheridan County they have a very good nursing home. The quality of life there is about as good as the quality of life gets in a nursing home. For a time last year, however, the home was written up for non-compliance with federal law concerning bed rails and lap table type of securities. They were told they could accept no more Medicaid patients until those restraints were removed. The families protested, and residents protested also. Some of those people were even providing their own beds. But to no avail; the restraints had to go. The beds there are narrow, and the residents needed the security of the bed rails. Several fell and they needed stitches. One broke a hip, which no doubt hastened her death, and a couple of others died after falls, which probably contributed to their deaths. Families are angry and can't understand why they don't have the right to determine the use of safety devices for their loved ones. She had invited DPHHS representatives to Plentywood to address her constituents' concerns, but they tried to persuade people that the federal law was the way to go, and gave people the impression that there really was nothing they could do. SB 477 works with the federal law and clarifies what safety devices can be used, so that nursing homes won't have to be afraid of losing their licenses over things like a bed rail or a lap tray. This is a good bill and she urges concurrence. {Tape : 1; Side : B; Approx. Time Counter : 0 - 3.1}

Lori Henderson, Havre, is administrator of a nursing home and has family members in a nursing home. She urges support of the bill. It brings back the rights of residents and their loved ones to make informed decisions about health care. By the time a person enters a nursing home, they have had many losses, including their home, frequently a spouse, a pet, and their autonomy. Nursing homes must continually safeguard residents' individual rights. The right to make informed decisions and the right to self determination are often some of the few things that residents have left as they age. She believes in on-going assessment and monitoring and trying to find the safest things she can to keep residents safe and happy. This bill isn't meant to circumvent or change the restraint laws. It would be terrible to go back to tying people down, and that's not what they want. They want to provide safe care for residents. They would use safety devices only as a last resort and with strict concurrence with families, physicians and everybody involved to see that their residents are safe. **EXHIBIT** (huh62a05) {Tape : 1; Side : B; Approx. Time Counter : 3.1 - 5.4}

Evelyn Havskjold, Director, Area 10 Agency on Aging, presented her mother-in-law's nursing home bill to show the purchase of a code

alert bed pad and chair pad for her. Still, she had fallen three times in the two and a half weeks she had been in the nursing home. If they had the authority, they could have used a simple seat belt and she would not have fallen. In working with families through her job, many of them stated that if there had been simple precautions that the nursing home staff could have taken, the patients would not have fallen and additional expense would not have been borne. She strongly recommends passage of the bill. **EXHIBIT (huh62a06)**
{Tape : 1; Side : B; Approx. Time Counter : 5.4 - 7.5}

Denzel Davis, Admin., Quality Assurance Div., Dept. of Public Health and Human Services, said there was a major amount of debate about the bill within the department, but they support the bill. It will clarify this issue that has been a major debate between restraints and safety devices. The amendments giving them rule-making authority do what they wanted the bill to do. **{Tape : 1; Side : B; Approx. Time Counter : 7.5 - 8.4}**

Janet Thomas, Hobson, said she was testifying as a family member. Her mother was in a nursing home for 11 years. She saw the time when bed rails were used, then all of a sudden they were absent. Her father-in-law was in a different nursing home for a period of time. When he went into the home, he had bed rails. It is not consistent out there. In the same community, there were no bed rails in one facility and bed rails in another. She asked for bed rails but was told that the home would run the risk of losing accreditation so they would not do it. She observed patients with head and facial injuries from a lack of bed rails. This is a very good bill for the safety of the patients. **{Tape : 1; Side : B; Approx. Time Counter : 8.4 - 11}**

Jim Ahrens, Mt. Hospital Assn., said all of their facilities either run or own nursing homes. This is a sensitive issue. Nobody wants to harm anybody. The issue at hand is if you use bed rails, people can get injured by them and there are deaths that are caused by them. On the other hand, if you don't use them, there's injuries and deaths caused by lack of using restraints. The issue before you is, what is good public policy? If people want to use them and are informed about them, it makes sense to have a bill like this. If you have a relative in a nursing home, you don't want them falling out of bed and injuring themselves. If you put up the guard rail, you don't want them to be injured by that either. That's the issue. If people willingly, with informed consent, want to do this, why not? That's the way the issue presents itself, and that's the decision you have to make. **{Tape : 1; Side : B; Approx. Time Counter : 11 - 12.8}**

Phyllis Taylor, Lewistown, skilled nursing center administrator, said she has worked in the field for 21 years and has seen a lot of

changes. She relayed a personal story of her father-in-law, who lived with them, fell and broke his hip, and ended up in the nursing home. She instructed staff to drop the side rails and not use the restraint, even though she was concerned that he was confused enough that he might not remember to call when he needed help to get up. He did get up, fell again and fractured his other hip. His family was cheated out of at least two good years with this grand old man. She said her facility was cited for side rails this last year. The patient was terminally ill and very weak, and his family had requested that side rails be put up. The record was reviewed when they were surveyed, and the surveyors decided the home did not have the right to use the side rail. Another patient fell 15 times over a three month period and the family requested that side rails be used. The facility didn't do that but tried other alarms, which the patient removed. Finally he fell and, because he was diabetic, the resulting deep bruise on his arm became seriously infected. They finally got a physician's order to put up the side rails, and the family insisted that this be done. He has not fallen since the facility agreed to put up the side rails. She shared two other stories of successful use of side rails in her facility. People have a right to make choices and families have a right to participate in care. There are times when it is right to use a bed rail.**{Tape : 1; Side : B; Approx. Time Counter : 12.8 - 20.4}**

Bill McLean, nursing home owner for over 30 years, said this bill is common sense. As a provider, the way that different nursing homes have dealt with this bothers him, because they have taken mattresses out of the beds and put them on the floor. There is a risk with bed rails, but the reward is greater than the risk. As long as the family is informed and knows what the risk is, it ought to be in the hands of the family, rather than the federal government making that decision for us.**{Tape : 1; Side : B; Approx. Time Counter : 20.4 - 22.2}**

Opponents' Testimony:

Betty Beverly, Ex. Dir., Mt. Sr. Citizens' Assn., said she had prepared her testimony prior to seeing the amendment, so she isn't sure now if she is a proponent or opponent. The bill was presented to the Senate Judiciary Committee and voted on in the Senate before she was aware of its content. She had short notice of today's hearing so had little time to contact MSCA members for input. Members she has spoken with feel there is no need for the bill. Some level of assessment should be made prior to the use of any type of restraint. The federal law and HCFA already addressed these issues. She stated her concerns with specific sections of the bill. She asked the committee to consider if the bill passes, will it make a significant change in existing law and in the education of

residents, families or physicians in the use of safety devices. She wondered if the concern was brought forward by consumers and wondered who wants the bill. She suggested that it might be better to table the bill and do some studies and receive input from seniors, their families and the nursing homes. **{Tape : 1; Side : B; Approx. Time Counter : 22.2 - 30}**

John Kershaw, East Helena, presented written testimony and other information in opposition to the bill. He believes that these restraints are very dangerous. **EXHIBIT(huh62a07) EXHIBIT(huh62a08) EXHIBIT(huh62a09) EXHIBIT(huh62a10) EXHIBIT(huh62a11) EXHIBIT(huh62a12){Tape : 2; Side : A; Approx. Time Counter : 0 - 8.6}**

Chuck Notbohm, Clancy, Coordinator, Capitol City Task Force, AARP, said the bill came up too quickly and they had wanted to do some more work on it. They feel the amendments help the bill, but they still oppose the bill the way it is written. They can't understand why the bill is even here, due to the fact that it is legal to use the restraints they're talking about. He wonders if restraints might be used instead of having adequate staffing in some of the nursing homes. Although nursing homes really do make every effort to do a good job, there still is the human factor involved, which is employees, who are underpaid and there aren't enough of them. He doesn't see the need for the bill; it needs a lot more deliberation and a lot more thought. **{Tape : 2; Side : A; Approx. Time Counter : 8.6 - 11.4}**

Anita Rossmann, Mt. Advocacy Program, said MAP represents people with disabilities including mental disabilities. They don't believe the bill should pass; however, they are advocates for people with disabilities, and if they got a call from a nursing home resident saying they were not able to have bed rails and they were concerned about falling, MAP would advocate for them. She agrees with the previous speaker that bed rails can be used under existing regulations. She has done research on this bill since she learned about it and she doesn't see how it can be fairly legislated, because the ground is already occupied by federal regulations. If a facility gets federal money and they are a long-term care facility under the federal definitions, they have to follow the federal regulations, which are very complete and thoroughly defined. She thinks if this bill passes it will deceive facilities, because they will rely on it and think they have to do less before they use side rails or similar devices. They will then get "dinged" by HCFA and be cited for jeopardizing patients. Then they will go to their former way of doing business, but this law will be on the books, and then the families will be deceived, because they will think the facilities are pulling their legs, letting them down, not cooperating, being obstinate, but the facilities would be just

trying to preserve their funding. **EXHIBIT** (huh62a13) {Tape : 2; Side : A; Approx. Time Counter : 11.4 - 15}

Questions from Committee Members and Responses:

Rep. Dell asked **Mr. Davis** about the studies presented indicating that restraints may have contributed to more accidents than they have solved and whether DPHHS had done any studies regarding broken hips and correlations with no side rails, or any other studies. **Mr. Davis** said DPHHS has not done any studies. **Rep. Dell** wants to know if there actually is a correlation between falling and safety restraints, and if DPHHS should be considering the studies used by the federal government. **Mr. Davis** said the problem with all of the studies, particularly the HCFA study, is that they study what happens if you have a failure in the restraint. HCFA has never studied the reverse side of that, if you're not using a safety device because of a concern for the survey process or whatever, what the negative outcomes may be. That hasn't been studied very thoroughly and not studied at all by HCFA. **Rep. Dell** said in 1992 the American College of Physicians did a study on mechanical restraint use and fall-related injuries among residents of skilled nursing facilities, and concluded that such restraints were associated with continued and perhaps increased occurrence of serious fall-related injuries after controlling for other injury list factors. The study results suggested a need to consider whether restraints provide adequate if any protection. He asked **Mr. Davis** to comment on that. **Mr. Davis** said he had no comment. **Rep. Dell** asked **Mr. Davis** if we passed this bill, would the feds come back and say we still couldn't do it. **Mr. Davis** said when the bill came out, he asked the HCFA Region 8 office for comments regarding their position. He doesn't know what their position is, other than the position they have taken in other states, such as Minnesota, who passed a similar bill. One of the things this bill does that the federal regulation does not do is to broaden the definition of medical symptoms. Until this bill was written, there had not been a definition of medical symptoms. The federal government did not put that into the federal regulations. From DPHHS's perspective, when issues come up regarding the use of safety devices and they look at the federal regulations, those regulations discuss restraints and there is no mention of safety devices. In 1987 when the new reconciliation act was passed to upgrade long-term care facility regulations, even in the federal statute there is a specific definition about using safety devices. The federal government chose to ignore that. DPHHS discussed that with them four years ago, and they said they didn't recognize safety devices. In **Mr. Davis's** mind, regardless of what the studies might show, this bill at least gives the department, residents and their families, and facilities an opportunity under strict regulations to

look at safety devices and put them in place if there is a medical symptom, which is now defined. **Rep. Dell** asked if he could give informed consent right now to use bed rails for a parent or himself without having the nursing home refuse and say it isn't an option. **Mr. Davis** said the rights of the patient and the family get suppressed by all of the very rigorous federal regulations, and under the current federal process, if he used the term "safety device," that's not recognized by the federal government and the answer would be no. Maybe he could go through the process regarding "restraints" and get what he wanted.

Rep. Lee asked **Anita Rossman** about her comment that if a patient wanted a bed rail and they called her, she could advocate for them, and she wondered if they have publications in all of the hospitals that would allow patients to know this. **Ms. Rossman** said they have a brochure that is widely distributed, but they don't cover the whole state more than once every two years, so they are in some facilities but not in others. **Rep. Lee** asked the sponsor if this is meant to be a matter of choice for the patient or family members of the patient. **Sen. Jergeson** said that is right.

Rep. Esp asked the sponsor when the federal regulation became a concern of the facilities. **Sen. Jergeson** said it has been a number of years and it's finally come to a head. **Rep. Esp** asked about the opponents' statements that bed rails and similar restraints are legal now in some cases, and if that is the sponsor's understanding. **Sen. Jergeson** said if he understands it, you may be able to manipulate an interpretation of the rules that a bed rail would be allowed for a medical condition, but a safety concern of a family may not be considered a medical condition for which you would be able to choose to use bed rails. **Rep. Esp** asked **Mr. Davis** about the concerns he'd had prior to the amendments being offered to the bill. **Mr. Davis** said the concerns were addressed by the amendments. The first concern was that under the current definition under health care facilities, this bill would have been applicable in a number of other settings like retirement homes and foster care homes. The amendment specifies that it is only for nursing homes and personal care facilities. There was a small issue about defining resident. The biggest issue for the department was rule-making authority. Any time you get a statute such as this, you'll have differences of opinion about how the statute's going to be interpreted in particular cases. Rule-making authority allows the department to write rules to clarify those issues.

Rep. Esp asked which issues the department would write rules to address. **Mr. Davis** said the first one would be "other similar devices," as now they have three defined, "side rails, seat belts and other similar devices." This will probably have to be clarified.

Rep. Schrumpf said that her mother was in a nursing home for nine years and had numerous injuries while she was there, with one of her worst falls occurring when she did not have a seat belt on a chair, fell and broke a hip; and she asked **Rose Hughes** about Mr. Kershaw's testimony regarding a bed rail for his father. **Ms. Hughes** clarified the question by saying that he had originally wanted a bed rail, then received information from the facility and decided he didn't want it. The procedure this bill provides would be if he had asked for the bed rail, the facility would have had to first provide him with the information. Had he gone back after reading the information and said he wanted the bed rail, it would have been difficult for him to get it. In terms of him not wanting it, nothing in this bill changes that. He asks for it, he gets the information, and then he makes the choice. The resident and/or the surrogate decision maker says yes or no, either we think the benefit outweighs the risk or we don't think that. They make that choice. **Rep. Schrumpf** asked how many people die from bed rail injuries in comparison to just falls. **Ms. Hughes** said the information she had provided to the committee included an article that talked about a study of falls and deaths from falls done by the Centers for Disease Control. In 1997, there were 9,000 deaths in the US associated with falling of people 65 years of age and older. Information she had distributed prepared by government agencies, consumer and advocacy groups about bed rails and the risks indicated that between 1985 and 1999, 228 deaths were associated with someone being caught, trapped or entangled in a bed rail. **Rep. Schrumpf** asked what this bill does that can't be done now. **Ms. Hughes** said the patient would have the last word if the bill passed. **Rep. Schrumpf** asked if the family would have no say and it would be up to the patient themselves to say they want this. **Ms. Hughes** said the way the bill is worded, the patient has the say if they're able to make decisions. If not, the family member or other legally-appointed guardian or surrogates could make the decision for them. **Rep. Schrumpf** asked what the facility's responsibility would be if a bed rail is used. **Mr. Hughes** said the responsibility remains as it is today. They must monitor what's going on with that resident, they must assess and reassess, they must evaluate, they must make sure that the bed rail is used safely. They have certain responsibilities with or without this bill; it doesn't change those responsibilities.

Rep. Brown apologized to **Mr. Kershaw** for the scheduling of this bill, saying there was no attempt to rush the bill through but the committee had so many bills that had to be heard to meet the deadlines.

Rep. Noennig asked who would determine if a patient was unable to make decisions so the family member had to make the decisions. **Ms. Hughes** said under Montana's resident rights statutes, 50-5, part

11, there is a section, 50-5-1106, that talks about how to determine if a resident is not able to make decisions. Either they've been adjudicated incompetent or they've been found by their physician to be medically incapable of understanding their rights and making decisions, or they exhibit a communication barrier. **Rep. Noennig** said the bill on line 20 refers to persons who are designated to make decisions regarding sustaining treatment pursuant to 58-9-103, which is the living will provision, and he asked how this relates to the decision that would be made under this bill. **Ms. Hughes** said some of the individuals in nursing homes who may be asking for safety devices would be persons who had someone appointed under the other statute to make decisions for them. The intent was that if they've been appointed to make life and death decisions, they are appropriate to make a decision about a bed rail. They tried to include everyone who might have been appointed as surrogate decision makers, because they are the people you would expect to be able to make this kind of decision for the resident. **Rep. Noennig** said that was his problem, because everyone is included in the bill who has been given authority by law to do certain types of actions that he doesn't think necessarily includes this decision, such as conservators, who are appointed to make decisions about finances. He thinks a guardian or a person who has been appointed with a health care power-of-attorney is exactly the right person. He is concerned that we don't have a declaration by a court that this person is incapable of making a decision on restraints, and we don't have a document signed by the person that gives the rights to another individual to make the decision. He is concerned that we don't have a legal patient informed consent in some of these instances, and asked **Ms. Hughes** if she would object to limiting this to instances where it is legally permissible for people to make these kinds of decisions. **Ms. Hughes** said she would have no problem. The reality of nursing homes is that 99 percent of those people don't have a guardian appointed. They're more likely to have someone appointed to make end-of-life decisions. In the nursing home, the reality is that the physician and the professionals in the facility consult with family members, who are not legally appointed, and they are giving consents and making decisions. For this bill to be helpful, we have to extend it to family members in those cases where there isn't a legally-appointed guardian. If the definitions in the resident rights section of how a family member gets to be in that position doesn't help, perhaps there is something else we should say, but for the bill to be helpful and do what is intended, we need a way to recognize the family members.

Rep. Noennig asked **Ms. Rossman** about her statement that this bill won't work because it conflicts with federal law. If someone has the proper power of attorney or is an appointed guardian, or the individual himself or herself is capable of doing so and they

consent to this procedure, does that conflict with the federal law requirements and is it something that can't be done? **Ms. Rossman** said it doesn't conflict with the federal law, it just isn't adequate under federal law. The federal rule defines what a medical symptom is and also says that a purely subjective statement alone is not sufficient to satisfy the requirement that the restraints are used in response to a medical symptom. She is concerned that the statute is saying that we have a new definition of medical symptom, and the Montana legislature can't amend the federal rule. **Rep. Noennig** asked about informed consent and whether the medical symptom is defined as one thing or another thing, and the patient has legally informed consent, if there is any reason why they can't consent to the procedure, whether it's defined in federal statute or regulation or not. **Ms. Rossman** said materials she had provided to the committee contained the information addressing the consent issue, and the federal regulations state that the consent of the patient or a legally adequate decision maker alone is not enough to justify it. Not even the order of a doctor is something the facility can rely on. The facility has to do the assessment, and the facility has to make the determination that the doctor's order is appropriate, this is a medical symptom there, and the restraint is the least restrictive way of treating the symptom.

Rep. Rice asked **Phyllis Taylor** about the citation she had received for using bed rails. **Ms. Taylor** said in the last survey done by the DPHHS survey team, they received a deficiency for using restraints. Surveys are done of all facilities on an annual basis. **Rep. Rice** asked why an entry couldn't be included on the waiver form that patients fill out when they enter a facility as to whether or not they want restraints. **Ms. Taylor** said it could be handled that way, but that isn't an option or a choice that patients have.

Rep. Schrupf asked **Rose Hughes** about the problems and potential injuries for health care providers in caring for persons who are put on mattresses on the floor for safety reasons. **Ms. Hughes** said when mattresses are put on the floor, sometimes a new set of problems is created for the employees and for the patients. Some of them can't get up from the floor, and then it is a question of whether that is a restraint and the facility may be cited for it.

Rep. Jent asked **Anita Rossman** about her materials relating to the federal laws that she had distributed, and whether Montana is preempted from doing what this bill does. **Ms. Rossman** said she believes the federal law does preempt what we can do. **Rep. Jent** asked what the concept of preemption means. **Ms. Rossman** said basically it means that if the federal government already occupies an area, states are limited or prevented from legislating in the same area. She believes that is the case here, but would have to research it. **Rep. Jent** asked if she would be willing to look into

it and give the committee a memo if there is a preemption problem, and **Ms. Rossman** said she would do that.

Rep. Raser asked **Ms. Rossman** to clarify restraints, because among the information she had distributed, it stated that a restraint does not include a device that is adjacent to an individual, such as a side rail, tray table or geri-chair; and it seemed that this bill is addressing exactly those devices but not the other kinds of restraints. **Ms. Rossman** asked if she was referring to the memo with the definitions that FDA and HCFA have. **Rep. Raser** said there was one from FDA and HCFA and another from a web site.

Ms. Rossman said she thought the HCFA/FDA joint letter did a good job of explaining what HCFA's rule meant. The FDA rule isn't the rule the facilities have to follow if they want to get paid. They have to be aware of the HCFA definition. The FDA is doing research into standards for restraint beds. There have been four deaths in the last three years in Montana to do with restraint beds, because the mattresses in the beds with side rails were too small, so people were trapped and choked to death. Standards would cover things like that, but we don't have standards yet. One day side rails may be able to be used on demand because they won't be as dangerous. **Rep. Raser** asked if there is a definition of what a restraint is. **Ms. Rossman** said the committee's staff person has the HCFA explanation of the rule and it includes definitions and how to apply the definitions. **Rep. Raser** asked if in the HCFA definitions, side rails, tray tables and geri-chairs were listed as restraints. **Ms. Rossman** said yes.

Rep. Newman asked **Mr. Davis** to look at the final page of the bill, lines 7-9, new section 5, subsection 2, saying the long-term care facility may not be subject to fines, civil penalties or other state or federal survey enforcement remedies solely as the result of allowing the use of these devices, and asked what authority the State of Montana, particularly the state legislature has to say that a facility won't be subject to federal regulation or federal intervention or federal fines. **Mr. Davis** said the term "subject to fines, civil penalties or other state or federal survey enforcement remedies" is already included in the state law, so he didn't presume that this bill is preempting the federal government from doing what they do on a regular basis. **Rep. Newman** said he understood this wouldn't preempt federal law, because the supremacy clause of the constitution would take care of that, but his concern is that we are setting bad policy or misleading facilities and patients and their families in creating the appearance that these federal regulations or federal penalties are not going to apply. He understands this won't preempt the feds, but he is afraid we are telling people it will. **Mr. Davis** said he has a different opinion of what that says, and he doesn't think we are telling people

anything to that effect. If the committee believes that item 2 is misleading, maybe it should be taken out.

Chairman Thomas asked if there is a study in any of the materials the committee has received that will compare the numbers of people who have been injured by the use of bed rails and the numbers of people who have been injured without the use of bed rails. **Phyllis Taylor** said she might be able to get some of that information. **Chairman Thomas** said he would appreciate the information because he feels that is the crux of this. *{Tape : 2; Side : A; Approx. Time Counter : 15 - 30} {Tape : 2; Side : B; Approx. Time Counter : 0 - 30} {Tape : 3; Side : A; Approx. Time Counter : 0 - 5}*

Closing by Sponsor:

Sen. Jergeson thanked the committee for an excellent hearing. He thought it was interesting that there had been questions about whether there had been any studies to indicate whether restraints are more or less dangerous than no restraints. All that you would get from a study may be a predisposition that you should always use restraints or that you should never use restraints. The point of this bill is that it would be on a case by case basis, and it would be a decision made by the appropriate decision makers, either the resident themselves or some responsible family or other person responsible for that resident, in conjunction with the physician and the professional at the facility. He hoped that the committee would work on the bill, address the issues that were raised, and find some formula so this legislature could pass the bill. *{Tape : 3; Side : A; Approx. Time Counter : 7 - 12.8}*

Chairman Thomas appointed a subcommittee on SB 477 consisting of himself, Rep. Noennig, Rep. Jent, Rep. Schrumpf and Rep. Raser. Rep. Noennig will chair the subcommittee. *{Tape : 3; Side : A; Approx. Time Counter : 13.1 - 14.9}*

HEARING ON SB 311

Sponsor: SEN. VICKI COCCHIARELLA, SD 32, Missoula

Proponents: George Wood, Ex. Sec., Mt. Self-Insurers' Assn.
Riley Johnson, NFIB
Spook Stang, Motor Carriers Assn.
Nancy Butler, General Counsel, State Fund

Opponents: None

Opening Statement by Sponsor:

SEN. VICKI COCCHIARELLA, SD 32, Missoula, said this bill is normally heard in the Business and Labor Committee, and is a very quick fix to a current law. She works as a Workers' Comp claims adjuster, and line 24 of the bill is crossed out. The intent of the bill is to make it easier to send questions to doctors to ask them about workers who are determined to have an occupational disease rather than an injury. When the adjusters send the questions out to the doctors, what they do is go in front of these lines in the bill, 17, 19, 21, 22 and 24, and say, is the disease, is there a direct causal connection? If you do this with the deleted language, you would say "is the disease incidental to the character of the business and not independent of the relation of employer and employee?" When they send that out to the doctor, he goes "What?" and she has had those letters come back from the doctor saying, "What are you talking about?" or "Not applicable," or "What do you mean?" or "Unable to answer." They can't respond to let the adjusters know how it works and how it applies to the person. The bill eliminates that question that none of the adjusters can explain to doctors and doctors can't answer, so the bill makes it easier for doctors when they're trying to apportion an occupational disease for work comp. Line 26 starts the new language, which is practice in the industry. The bill doesn't change anything, but puts it in statute for the purpose of clarification to make sure everybody is on the same playing field and the doctors understand the question. It's good for employers and employees, and there were no opponents to the legislation in the Senate. **{Tape : 3; Side : A; Approx. Time Counter : 15.9 - 18.3}**

Proponents' Testimony:

George Wood, Ex. Sec., Mt. Self-Insurers' Assn., said they support the bill. It clarifies and expedites the handling of claims. He is also testifying for **Riley Johnson, NFIB** and **Spook Stang, Motor Carriers,** who also support the legislation. **{Tape : 3; Side : A; Approx. Time Counter : 18.5 - 19.4}**

Nancy Butler, General Counsel, State Fund, said they support this clarification of the Occupational Disease Act and would appreciate the committee's support of the bill. **{Tape : 3; Side : A; Approx. Time Counter : 19.4 - 20}**

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

Sen. Cocchiarella thanked the committee for the hearing. **Rep. Facey** will carry the bill. {Tape : 3; Side : A; Approx. Time Counter : 20. - 21.9}

HEARING ON SB 310

Sponsor: SEN. MIGNON WATERMAN, SD 26, Helena

Proponents: Aidan Myhre, MCHA

Chuck Butler, Blue Cross/Blue Shield & Vice Chair,
MCHA Board of Directors

Claudia Clifford, Office of State Insurance
Commissioner

Mary Allen, Mt. Benefits and Life Company

Opponents: None

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, said this is a basic housekeeping bill for the Mt. Comprehensive Health Assn., and she is sponsoring it on behalf of the board of directors of MCHA. The title pretty much tells about the bill: applying mandatory coverage for severe mental illness; allowing the association to charge late fees, penalties and interest; providing rule-making authority regarding late fees and interest; raising the amount to \$50 under which an assessment need not be levied; and raising the maximum pharmacy benefit to \$2,000. {Tape : 3; Side : A; Approx. Time Counter : 21.9 - 23.7}

Proponents' Testimony:

Aidan Myhre, MCHA, said the bill is a basic housekeeping bill. She gave a brief overview of MCHA, saying the board is made up of eight members. Seven of the members represent the insurance companies doing business in Montana, providing health insurance for the people of Montana. The eighth member is a consumer advocate. MCHA is a health insurance plan for approximately 2000 individuals in Montana. They operate two plans, one called a traditional plan, which is basically the high-risk pool, for people who cannot get insurance on the market due to a pre-existing condition or a high risk. Those individuals have an option to go into the traditional health insurance plan. The second plan is the portability plan for people who have left group coverage, have exhausted COBRA benefits and need a place to go. The lead carrier for MCHA is Blue Cross/Blue Shield. The funding mechanism is somewhat unique and is addressed in this bill. Basically the individuals who are participating in MCHA pay premiums which are limited by statute.

Under the traditional plan they cannot be more than 200 percent of an average individual the same age. For the portability plan they are limited to 150 percent. So they are typically higher than most healthy individuals' premiums. Because of the claims under this plan and its high-risk pool, the premiums paid are not sufficient to cover the cost of the plan, so the plan is subsidized by the insurance industry to the tune of about \$4.6 million this year and \$5.2 million next year. It's a one percent assessment, and that is assessed on an annual basis. That is one component of this bill. It changes the language in the statute to say that the insurance companies can be assessed up to one percent. They've been assessing on an as-needed basis, so they just want to be able to assess up to one percent and not more than one percent. The other component is, when insurance companies are assessed, they would like to be able to collect that money in a reasonable amount of time, so anything that is past 30 days could be charged a late fee or interest. The board has proposed this as a way to basically manage collecting those assessments. The other two changes in the bill are basically changes that have been in place for about six months, and those are changes in the benefits. The pharmaceutical or prescription drug benefit was limited to \$1,000 and is now being raised to \$2,000 for members. The other is the mental health severity issue, which was passed in 1999 legislation, and this bill includes MCHA as qualifying under that law. She distributed the MCHA annual report.

EXHIBIT (huh62a14)

Chuck Butler, Blue Cross/Blue Shield and Vice Chair, MCHA Board of Directors, said he is also testifying on behalf of **Claudia Clifford, representing John Morrison, State Insurance Commissioner.** Therefore he is representing both the MCHA board and Commissioner Morrison in expressing strong support for this bill. With regard to the coverage for severe mental illness through the association plan, in the 1999 legislative session, legislation was passed that required insurance companies to provide benefits for individuals in our state who suffer from severe mental illness. That legislation included the traditional plan of the MCHA, but it was not added due to an oversight. The board of directors last summer adopted the benefit effective January 1, but since the other parts of the severe mental illness are in statute, it only makes sense to include this in statute. **{Tape : 3; Side : A; Approx. Time Counter : 23.7 - 26.2} {Tape : 3; Side : A; Approx. Time Counter : 26.2 - 28.2}**

Mary Allen, Mt. Benefits and Life Company, said they are represented on the MCHA board, and they support the bill. **{Tape : 3; Side : A; Approx. Time Counter : 28.2 - 28.5}**

Opponents' Testimony: None

Questions from Committee Members and Responses:

Rep. Shockley asked the sponsor to explain the section of the bill dealing with the late payment charge. **Sen. Waterman** deferred to **Aidan Myhre**, who said the language was developed by Susan Fox from Legislative Council. It allows for either interest or a late penalty. It is something that the board would be assessing the other insurance carriers, and they would make the decision whether they wanted to do a late penalty or interest or if that was even appropriate. It is a tool that is not currently in statute but allows them to focus on accounts receivable. **{Tape : 3; Side : A; Approx. Time Counter : 28.5 - 30.2} {Tape : 3; Side : B; Approx. Time Counter : 0 - 1.7}**

Closing by Sponsor:

Sen. Waterman closed by saying this bill clarifies some of the powers of the MCHA Board. **Rep. Schmidt** will carry it on the floor. **{Tape : 3; Side : B; Approx. Time Counter : 1.8 - 2.1}**

HEARING ON SB 207

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Norma Jean Boles, Health Services Manager, Dept. of Corrections
Donald Harr, Billings, Mt. Psychiatric Assn. and Mt. Medical Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, said page 2 of the bill, beginning on line 21, is what this bill is about. It states that the former forensic unit at Warm Springs is the property of the Department of Corrections and the building may be used only for treatment of inmates with chemical dependency or other mental or physical health-related problems. This teamed up with the resolution he sponsored should clarify for the Land Board what the future of this building will be. Without the resolution and this bill, this building is scheduled to be given away. It cost \$6.3 million in 1988 when it was completed. The state paid cash for it, there is no bond on it, and we were about to give it away. That's what these bills are all about, and they tie in with the 4th time DUI offender bills. **{Tape : 3; Side : B; Approx. Time Counter : 2.8 - 4.4}**

Proponents' Testimony:

Norma Jean Boles, Health Services Manager, Dept. of Corrections, said the department supports this bill. It is crucial in implementing SB 489, which proposes to use the Xanthopoulos Building as an alcohol treatment center for the 4th and subsequent DUI offenders. {Tape : 3; Side : B; Approx. Time Counter : 4.6 - 5.5}

Donald Harr, Billings, Mt. Psychiatric Assn. and Mt. Medical Assn., said they very strongly support this bill, which will make the Xanthopoulos Building a facility for medical and mental health purposes, which include the treatment of the 4th DUI offenders. That is a serious mental health condition, even though sometimes they tend to separate alcohol and other drug use from mental health. {Tape : 3; Side : B; Approx. Time Counter : 5.5 - 6.8}

Opponents' Testimony: None

Questions from Committee Members and Responses:

Rep. Newman asked the sponsor about page 2, new section 2, lines 21-23, and if the 4th DUI bill goes the way of the dinosaur, would this bill still allow for the use of this facility for treatment of other inmates who have mental or chemical problems. **Sen. Keenan** said that is correct. **Rep. Newman** asked if that was the intent, to make sure this facility would be used for a constructive purpose within the Dept. of Corrections. **Sen. Keenan** said yes. He hopes that it can be used as a mental health treatment facility for inmates.

Rep. Jent said it was his understanding that SB 489 was going to be substantially amended to maintain the felony status of the 4th DUI, keep the 13-month sentence and still allow for treatment during that 13 months at this building, and he asked the sponsor if that was right. **Sen. Keenan** said he doesn't know, but he had been warned that the bill in its current state is in trouble. **Rep. Jent** asked if HB 489 went down, under the current statutory regime could the state still send felony drunk drivers during their sentence to this building and treat them there under lock and key. **Sen. Keenan** said he believed that is true, although that is a big policy question and would take some executive branch meetings to figure it out.

Rep. Facey asked the sponsor if he would consider this a new facility, and **Sen. Keenan** said no, because at the present time there are forensic patients there, some of whom are there at Dept. of Corrections expense, and DPHHS staffs it and cares for some of that population.

Rep. Esp asked the sponsor who we had planned to give the building away to. **Sen. Keenan** said it was going to Anaconda-Deer Lodge County for use as a regional prison. The state was going to give it to the county, and they were going to lease it for a dollar a year to a private entity, CCCS out of Butte, to run a regional prison. **Rep. Esp** asked **Sen. Keenan** if he thought this building would ever be needed for mental health services for the general population, rather than the correctional population in the future. **Sen. Keenan** said he believed we could probably use it now, from his visits to the prison. He understands that there are some 250 inmates on psychotropic medication and as many as 400 out of 1350 that are there who could be considered mentally ill. Depending on what happens with SB 489, that could be a DOC mental health treatment facility sooner than expected at considerable cost; whereas, if 489 passed, it's about a \$2.89 million savings because we go to a six-month program with some aftercare followup as opposed to the 13 months. It's a felony and they're sentenced to 13 months and a lot of them are in pre-release centers. If they act out, they go to the state prison. 13 months versus six months; you save \$10 a day with this treatment facility at the Dr. X building. He thinks it is the right thing to do, but he doesn't know whether we can afford to get there sooner.

Rep. Brown asked the sponsor about the word "only" on page 2, line 22 and if he thought it was a good idea to put in statute that the building may be used "only" for the treatment of inmates, and what is the rationale behind that. There may be some other use for the building at some time. **Sen. Keenan** said the nature of the building is such that it lends itself to that, but he'd leave it up to the committee and wouldn't have a problem with an amendment. **Ms. Boles** said she agreed with **Sen. Keenan** and would give up the word "only."

Rep. Esp asked the sponsor if there was any possibility of danger to the folks who are in the new hospital from the inmates who would be in the X building. **Sen. Keenan** said that subject caused a great deal of discussion, which is why they came up with this solution. If it is used as a treatment facility for alcohol or mental health, they would be compatible. The proposed use as a regional prison was what began the discussion about the proper use of the building. The building is about 400 yards from the back door of the new state hospital. The mental health advocates were disturbed about having a regional prison that close by. It's dangerous to have a regional prison there, but he thinks the use as a treatment facility for alcohol or mental health would not be a problem. **Rep. Esp** asked if a person with a substance abuse problem as well as mental illness could be appropriately treated there even if they weren't a DOC consumer. **Sen. Keenan** said those folks are called MICA, mentally ill chemically abusing, and he thinks their sentencing and treatment would be determined by the court.

Rep. Schmidt asked **Sen. Keenan** who would run this and would it be leased out. **Sen. Keenan** said plans now are to go out for an RFP, for bid. CCCS, who runs youth homes in Spokane and has a facility in Butte, has expressed interest in bidding on the contract. It would be open for anybody to bid to provide the treatment. **{Tape : 3; Side : B; Approx. Time Counter : 6.8 - 19.9}**

Closing by Sponsor:

Sen. Keenan thanked the committee for the questions and said he had learned some things. **{Tape : 3; Side : B; Approx. Time Counter : 20.1 - 20.5}**

HEARING ON SB 181

Sponsor: SEN. JOHN COBB, SB 25, Augusta

Proponents: None

Opponents: None

Opening Statement by Sponsor:

SEN. JOHN COBB, SB 25, Augusta, said this bill was brought on behalf of the Child Care Partnership. They were looking for ways to seek a low-interest loan as they do day care and had purchased a building in Helena. They had plans for remodeling the building and wanted to get a low-interest loan. When they looked at different ways, they found in the statutes that Montana law allows counties and municipalities to use bond proceeds, earnings on bonds, for projects. In looking at the project list, they have industrial, commercial, 50 megawatt hydro-electric facilities, community-based facilities for disabled, and universities in there. So the Child Care Partnership was thinking that they just wanted something for day care. The Senate Committee looked at it and said, why didn't they allow all the groups in, because everybody keeps adding every couple of years. They still have to get the OK from the county, and the bank has to do everything, so why not let all these groups in the definition in the bill. The deal again was to allow the Child Care Partnership to get a low-interest loan, and they figured they could save about \$1500 in interest a month. It's still up to the county, and you have to pay it back so if you aren't viable, you don't get the loan anyway. The amendment just simply lets all these groups that do non-profit or even profit services for families and such apply for the loans. If the counties or the banks don't think they can pay it back, they won't give the loan. **{Tape : 3; Side : B; Approx. Time Counter : 21.3 - 23.6}**

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Esp asked the sponsor if he understood correctly that the county would have to vote to fund this bond. **Sen. Cobb** said the county commissioners would have to OK it. It's kind of like a bond issue, but you have to pay it back. What's been happening is all of these programs, like the developmentally disabled facilities around the state, the county commissioners OK it, there might be a bond issue, but it's like a revenue bond, based on the revenue from that project to pay it back. He hasn't seen revenue bonds anywhere in the state that have failed to pay back any of those projects. In the worst default, the county would be stuck with it, but he hasn't seen anywhere where any county has been stuck with any of these programs. The facility keeps paying it back. This is just a way to use the county and city to get a lower interest rate. **Rep. Esp** asked if these are revenue bonds and the repayment of the loan is guaranteed. **Sen. Cobb** said the facility has to guarantee the repayment of the loans.

Rep. Dell asked the sponsor about non-profit or profit, because he owns a for-profit rehabilitation facility and one of his pet peeves is that there has to be a "non-profit" in front of a facility because he does the same thing as non-profits but elected to be a for-profit. **Sen. Cobb** said he thought the bill included for-profits but if Rep. Dell wanted to make it more clear, it could be added.
{Tape : 3; Side : B; Approx. Time Counter : 24.3 - 29}

Closing by Sponsor:

Senator Cobb closed.{Tape : 4; Side : A; Approx. Time Counter : 1 - 4.9}

EXECUTIVE ACTION ON SB 311

Motion/Vote: REP. FACEY moved that SB 311 BE CONCURRED IN. Motion carried 15-3 with Dell, Esp, and Noennig voting no.{Tape : 4; Side : A; Approx. Time Counter : 4.9 - 8.9}

EXECUTIVE ACTION ON SB 321

Motion/Vote: REP. SCHMIDT moved that **SB 321 BE CONCURRED IN. Motion carried unanimously. Rep. Brown will carry the bill.**{Tape : 4; Side : A; Approx. Time Counter : 9.4 - 11.7}

EXECUTIVE ACTION ON SB 310

Motion: REP. SCHMIDT moved that **SB 310 BE CONCURRED IN.**

Discussion: Discussion was held on the premium of one percent, as found on page 4. The sponsor had spoken about raising the premium, and this puts a cap on it but doesn't raise it. **Rep. Esp** asked **Rep. Facey** if the language on page 4, line 19 through 25 is the standard penalty language. He thought simpler wording would be a penalty of up to 1.5 percent per month not to exceed 18 percent and that would make more sense. He asked **Mr. Niss** about rewording the present language. **Mr. Niss** said a court's interpretation of the current language on lines 21, 23 and 25 would be that those three subdivisions, I, II and III, are all in the alternative. There are three alternatives there, not two. The reason for that exclusively is the use of the word "or" after the semi-colon on line 24. That is a very common bill-drafting technique, and the intent of that kind of a structure with the "or" only on line 24 is that it is interpreted as if there was also an "or" after the semi-colon on line 22. Further discussion was held on this section.

Motion: REP. SHOCKLEY moved a conceptual amendment to SB 310 to strike lines 21 through 25 and substitute a concept that says the association shall impose a penalty not to exceed 1.5 percent per month. He would not put a cap on it of 18 percent.

Discussion: **Rep. Lee** spoke against the amendment because by not spelling it out as clearly as the bill does and not allowing the flexibility to take a settlement less than the percentages made, the amendment wouldn't be doing what the bill is intended to do. **Rep. Raser** said she agreed with **Rep. Lee**, and we don't know what the sponsor intended with this. **Rep. Noennig** thinks the sponsor intended to delete a late payment penalty on lines 19 and 20 and to change line 25 to say both the charge in subsection 1 and the interest in subsection 2, so what it would really say is that you can charge 1-1/2 percent per month, not to exceed 18 percent, or you can charge interest at 12 percent a year, or you can charge both. He thinks that is the intent of the bill even though that

isn't what it says. **Rep. Shockley** said his point is that it isn't clear, and it's supposed to be clear.

Substitute Motion/Vote: REP. NOENNIG made a substitute motion that SB 310 BE AMENDED with a conceptual amendment. Rather than calling it a late payment, call it something else. And it would say that they can charge 1-1/2 percent a month, not to exceed 18 percent, or interest at 12 percent or both. Brief discussion was held. Substitute motion carried 17-1 with Ripley voting no.

Motion/Vote: REP. SCHMIDT moved that SB 310 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with Ripley voting no. {Tape : 4; Side : A; Approx. Time Counter : 11.8 - 30.2}

EXECUTIVE ACTION ON SB 207

Motion: REP. RIPLEY moved that SB 207 BE CONCURRED IN.

Substitute Motion: REP. RIPLEY made a substitute motion that SB 207 BE AMENDED with a conceptual amendment to strike the word "only" on line 22, page 2.

Discussion: Rep. Facey didn't know if that was a great idea, because there was concern this would be turned into a prison for southwest Montana, and if you take the word "only" out of there, it still could be turned into a prison. The word "only" is there because they want the Dept. of Corrections to have it, and they've made the language broad enough so they can treat numerous types of mental diseases in there. **Rep. Raser** agreed. She thinks if there are other uses that come up, people can come in and change it. At this point, to restrict it to those uses is the intent of the sponsor. **Rep. Noennig** said the State Land Board had decided that the facility would be donated to Anaconda/Deer Lodge County for use as a regional prison unless the legislature by resolution decided otherwise. This is what falls on the heels of that, the plans to do the treatment facility in the X building; and the funding was debated in HB 2, and there is a resolution that was debated before the Judiciary Committee that is similar to this bill. He likes the idea of deleting the word "only." **Rep. Jent** said this is a Dept. of Corrections bill and they wanted the language as it is. He suggested that the committee vote the bill up or down and not try to micro-manage the department or the county or anybody else. After further discussion, the question was called for.

Substitute Motion: REP. RIPLEY made a substitute motion that SB 207 BE AMENDED with a conceptual amendment to strike the word "only" on

line 22, page 2. Substitute motion carried 11-7 with Esp, Facey, Jent, Lee, Newman, Raser, and Schmidt voting no.

Motion/Vote: REP. SHOCKLEY moved that SB 207 BE CONCURRED IN AS AMENDED. Motion carried 16-2 with Dell and Esp voting no. Rep. Ripley will carry the bill. {Tape : 4; Side : B; Approx. Time Counter : 0 - 7.6}

EXECUTIVE ACTION ON SB 181

Motion: REP. SHOCKLEY moved that SB 181 BE CONCURRED IN.

Substitute Motion: REP. DELL made a substitute motion that SB 181 BE AMENDED with a conceptual amendment on page 2, line 20, and on line 23, to read "leased or owned by a non-profit or profit corporation."

Discussion: Rep. Dell said the rationale is that there are rehab facilities that are for profit. Some of the agencies and service providers listed in the bill that would qualify are for-profit agencies.

Substitute Motion/Vote: REP. ESP made a substitute motion that SB 181 BE POSTPONED UNTIL WEDNESDAY, MARCH 21 FOR EXECUTIVE ACTION. Motion carried 18-0. {Tape : 4; Side : B; Approx. Time Counter : 8 - 13.6}

ADJOURNMENT

Adjournment: 8:45 P.M.

REP. BILL THOMAS, Chairman

PATI O'REILLY, Secretary

BT/PO/Jan Brown transcribed these minutes

EXHIBIT (huh62aad)